

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

JAMES DERRICK O'NEAL,

Petitioner,

vs.

MARGARET BAGLEY, Warden

Respondent.

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:

Case No. 1:02-cv-357

:

District Judge Michael R. Barrett  
Chief Magistrate Judge Michael R. Merz

:

Death Penalty Case

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**MOTION OF PETITIONER JAMES O'NEAL  
FOR AN ORDER GRANTING HIM AN  
EXTENSION OF TIME TO FILE HIS TRAVERSE**

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Petitioner James Derrick O'Neal, through the undersigned counsel, moves the Court to issue an order pursuant to Fed. R. Civ. P. 6(b) granting him a ten-day extension of time until October 11, 2007 to file his traverse to Respondent's return of writ. The grounds for this motion are contained in the following supporting memorandum.

Respectfully submitted,

s/ John J. Gideon  
JOHN J. GIDEON (0008151)  
(Trial Counsel)  
250 East Stanton Avenue  
Columbus, Ohio 43214-1268  
Phone: (614) 844-3954  
Email: johngideon@sbcglobal.net

s/Michael W. Krumholtz  
MICHAEL W. KRUMHOLTZ (0009099)  
(Co-Counsel)  
Bieser, Greer & Landis LLP  
6 North Main Street, Suite 400  
Dayton, Ohio 45402-1908  
Phone: (937) 223-3277  
Facsimile: (937) 223-6339  
Email: mwk@bgllaw.com

COUNSEL FOR PETITIONER

**MEMORANDUM IN SUPPORT OF MOTION**

On June 21, 2002, Petitioner O'Neal, having exhausted all available state court remedies with respect to the claims he intended to raise in this Court, filed his petition for a writ of habeas corpus containing seventeen claims (Doc. No. 7).

Pursuant to this Court's scheduling order of June 7, 2002 (Doc. No. 11) Respondent Bagley filed her return of writ with an appendix containing a copy of the state court record on September 9, 2002 (Doc. Nos. 14-20).

On November 12, 2002, the date originally scheduled for Petitioner to file his traverse, Petitioner filed a motion requesting leave, pursuant to the decision in Atkins v. Virginia, 536 U.S. 304 (June 20, 2002), to amend his petition to add an eighteenth claim that his death sentence should be vacated on the ground that he is mentally retarded (Doc. No. 21). On that same date Petitioner moved the Court to stay these habeas corpus proceedings to permit him to exhaust his state court remedies with respect to this new claim (Doc. No. 22).

The Court granted Petitioner's motion to amend his petition by order of November 13, 2002. The Court ordered these proceedings stayed on December 11, 2002 pending exhaustion of state court proceedings (Doc. No. 24).

On May 7, 2007, following Petitioner's filing of a status report on May 4, 2007 (Doc. No. 36) describing the exhaustion of state court remedies with respect to his Atkins claim, this Court ordered the stay of these habeas corpus proceedings vacated (Doc. No. 37) and established a case schedule which began with Petitioner's filing of his motion for leave to amend his petition on May 31, 2007 which the Court granted by notation order on June 1, 2007 (Doc. No. 38).

On June 29, 2007 Respondent filed her amended return of writ (Doc. No. 42) accompanied by the filing of the record of the state court post-conviction proceedings on Petitioner's Atkins claim (Doc. Nos. 39 and 40).

Pursuant to the Court's order of May 7, 2007 Petitioner was required to file his traverse to the amended return of writ by Saturday, September 1, 2007 (Doc. No. 37).

On August 30, 2007 Petitioner filed a motion for an extension of time to file his traverse to October 1, 2007 (Doc. No. 45). The Court granted the motion by notation order on August 31, 2007.

As stated in Petitioner's August 30th motion for an extension of time, Counsel Gideon is taking the lead in drafting Petitioner's traverse to Respondent's amended return of writ. Although counsel has continued to make progress in drafting the traverse, Counsel Gideon had to devote a substantial amount of his time in August to an urgent family matter -- namely, selecting and moving my father into a retirement home. And contrary to expectations, this matter was not able to be resolved in early September. The matter will finally be resolved by the end of the day on October 1 with a family dinner at the retirement home.

For this reason counsel has not been able to make sufficient progress in the drafting of the traverse to enable Petitioner's counsel to file the traverse by this date.

Counsel respectfully request that the Court issue an order granting Petitioner a ten-day extension of time to and including Thursday, October 11, 2007 in which to file his traverse.

**CONSULTATION WITH OPPOSING COUNSEL**

Pursuant to Local Rule 7.3(a) of the S.D. Ohio Civil Rules Counsel Gideon consulted with Assistant Attorney General Stephen Maher on Monday, October 1, 2007 about this motion for extension. Counsel discussed the motion with Mr. Maher by telephone and explained the grounds for the motion and the intention to request an extension to October 11, 2007 to file Petitioner's traverse. Mr. Maher indicated to counsel that he does not oppose Petitioner's motion for this extension of time.

**CONCLUSION**

For all the foregoing reasons Petitioner submits that he has shown good cause for his motion and respectfully requests the Court to grant him an extension of time to and including October 11, 2007 in which to file his traverse to Respondent's return of writ.

Respectfully submitted,

s/ John J. Gideon  
JOHN J. GIDEON (0008151)  
(Trial Counsel)  
250 East Stanton Avenue  
Columbus, Ohio 43214-1268  
Phone: (614) 844-3954  
Email: johngideon@sbcglobal.net

s/Michael W. Krumholtz  
MICHAEL W. KRUMHOLTZ (0009099)  
(Co-Counsel)  
Bieser, Greer & Landis LLP  
6 North Main Street, Suite 400  
Dayton, Ohio 45402-1908  
Phone: (937) 223-3277

Facsimile: (937) 223-6339  
Email: mwk@bgllaw.com

COUNSEL FOR PETITIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on October 1, 2007 I electronically filed the foregoing Motion Of Petitioner James O'Neal For An Order Granting Him An Extension Of Time To File His Traverse with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Stephen E. Maher and Matthew C. Hellman, Assistant Attorneys General, Capital Crimes Section, 30 East Broad Street-23rd Floor, Columbus, Ohio 43215-3428.

s/ John J. Gideon  
JOHN J. GIDEON (0008151)  
(Trial Counsel)  
250 East Stanton Avenue  
Columbus, Ohio 43214-1268  
Phone: (614) 844-3954  
Email: johngideon@sbcglobal.net

COUNSEL FOR PETITIONER